

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

BILLY HOLMES  
a/k/a Billy Richards  
TDCJ-CID #189505  
Plaintiff,

v.

L. LARA SALINAS, et al.  
Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§

C.A. No. C-09-056

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

The United States Magistrate Judge filed her Memorandum and Recommendation on March 30, 2008. D.E. 7. Plaintiff filed objections on April 7, 2009. D.E. 10. Plaintiff seeks relief against a correctional officer and warden at the Garza West Unit, alleging that the correctional officer, Officer Salinas, confiscated his personal property illegally, and that the warden denied Plaintiff's grievances and did not supervise his officers properly. D.E. 1. Plaintiff also sues two Bee County court clerks, alleging that he attempted to file a small claims suit in Bee County in November 2007, but that the clerks rejected his pleadings and denied him access to the courts. *Id.* He claims that these actions have caused him mental, physical, and emotional stress, and seeks \$100,000 in compensation and \$200,000 in punitive damages. *Id.* Plaintiff seeks leave to proceed *in forma pauperis* and assistance in obtaining his inmate trust account statement. D.E. 2, 3.

The Magistrate Judge recommends that this Court deny Plaintiff's application for *in forma pauperis* status and dismiss his complaint without prejudice. She notes that the Fifth Circuit barred Plaintiff from filing any new civil suits without first getting written permission from a judge on the court. *Holmes v. Johnson*, No. 97-20855 (5th Cir. Apr. 27, 1998). The Circuit Court also directed clerks in the Circuit's jurisdiction to return to Plaintiff any submissions that violated this order. *Id.* Plaintiff has filed several federal lawsuits, at least four of which have been dismissed as frivolous or for failure to state a claim. *See Holmes v. Garcia*, No. 4:93-cv-1577 (S.D. Tex. Mar. 12, 1996) (dismissed for failure to state a claim); *Holmes v. Bacarisse, et al.*, No. 4:03-cv-3170 (S.D. Tex. Aug. 26, 2003) (denying permission to prosecute due to Fifth Circuit bar and dismissing case as frivolous); *Holmes v. Soward, et al.*, No. 4:06-cv-2037 (S.D. Tex. Jul. 31, 2006) (denying permission to sue due to Fifth Circuit bar and dismissing for failure to state a claim); *Holmes v. Soward, et al.*, No. 06-20860 (5th Cir. Dec. 6, 2007) (appeal dismissed as frivolous and Plaintiff notified that he is barred from further filing unless he is in imminent danger of serious physical injury).

Under the Prison Litigation Reform Act ("PLRA") and its three-strikes rule, 28 U.S.C. § 1915(g), a prisoner who has had three or more suits or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted is barred from bringing any more actions or appeals *in forma pauperis*, unless he is in imminent danger of severe physical harm. 28 U.S.C. § 1915(g). The Magistrate Judge recommends that this Court dismiss the complaint without prejudice, as Plaintiff has more than three strikes against him and has not alleged that he is in imminent danger of

physical harm. D.E. 7. Plaintiff has filed objections. D.E. 10. Plaintiff's sole objection is that the judgment entered against him in *Holmes v. Bacarisse, et al.*, No. 4:03-cv-3170 (S.D. Tex. Aug. 26, 2003), is void because Plaintiff was deprived of due process of law. D.E. 10, p. 2. However, the docket sheet in *Bacarisse* does not show that the judgment was ever declared void, vacated, or overturned. Additionally, even if this Court does not count *Bacarisse* as a strike for purposes of the PLRA, Plaintiff has still accumulated three strikes against him. He has not alleged facts showing that he is in imminent danger of severe physical harm, and he has not sought or received permission from an active Fifth Circuit judge before filing this suit.

Having reviewed de novo the Magistrate Judge's Memorandum and Recommendation, the pleadings on file, and defendant's objections, the Court accepts the Magistrate Judge's recommended decision.

Accordingly, the Court DENIES Plaintiff's application to proceed *in forma pauperis*. Plaintiff's claims are DISMISSED without prejudice.

ORDERED this 24 day of April 2009.

  
HAYDEN HEAD  
CHIEF JUDGE